



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 30, 1995

Mr. Charles E. Griffith, III  
Deputy City Attorney  
City of Austin  
Department of Law  
P.O. Box 1088  
Austin, Texas 78767-1088

OR95-162

Dear Mr. Griffith:

On behalf of the City of Austin, you ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 26391.

The City of Austin (the "city") received a request for the following records concerning Brackenridge Hospital:

1. A hospital security survey completed by the hospital police force in May 1991, and a follow-up report of December 1991.
2. Annual statistical reports for the hospital police force for 1992 and 1993.
3. A Request for Assistance, numbered 021602, from Byron Marshall to Deborah Lee-Eddie regarding . . . whether the hospital could replace the hospital police department with contracted private security . . . .

You raise no objection to releasing annual statistical information for the hospital police. Thus, we assume that you have already released any information you have that is responsive to item 2. In response to item 1, you have submitted a security survey of Brackenridge Hospital and two supplemental surveys, which you have identified as

Exhibits B, C, and D. You claim that much of the security survey and the supplements are excepted from disclosure under section 552.108 of the Government Code, the law enforcement exception, which permits the withholding of

An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . .

Gov't Code § 552.108(b).

The surveys were conducted for the city by the Brackenridge Hospital Police Department, a reserve unit of the Austin Police Department. You have marked the portions of the surveys that you believe are excepted from disclosure by section 552.108. You maintain that disclosure of this information would reveal risks to the physical security of hospital patients, equipment and supplies, including drugs, and identify opportunities for theft within the hospital. You also state that disclosure of the marked portions of the surveys would hinder the Austin Police Department, acting through the Brackenridge Hospital Police, from preventing, detecting, investigating, and prosecuting violations of the law on the hospital premises.

We have examined the surveys and agree that some of the marked portions may be withheld under section 552.108 of the Government Code. Information related to crime prevention, including security measures for specific premises, may be protected by section 552.108 when its release would unduly interfere with law enforcement or crime prevention. See Open Records Decision Nos. 456 (1987) (law enforcement exception protects information about employment of off-duty police officers by private businesses); 413 (1984) (sketch of security measures for environs of prison during next scheduled execution protected by law enforcement exception); see also Open Records Decisions Nos. 143 (1976); 22A (1974) (information revealing specialized equipment directly related to investigation or detection of crime excepted by law enforcement exception).

In this case, however, we conclude that releasing some of the information will not unduly interfere with law enforcement or crime prevention. You have agreed to release from the supplemental surveys items that were corrected by the time of the supplemental survey. You have not demonstrated how releasing this same information from the original survey will unduly interfere with law enforcement or crime prevention. Therefore, you must release the same items from the original survey that you agreed to release from the supplemental surveys. You may withhold the remaining marked information.

Item 3 is a request for assistance from the mayor to Brackenridge Hospital and the first assistant city manager concerning a letter from Burns International Security Services. The request for assistance and the letter, designated as Exhibit E, have been furnished to the requestor. You have also submitted Exhibit F, a memo prepared by the administrator

of Brackenridge Hospital in response to the mayor's request for assistance. You characterize the memo as discussing the implications of a major policy change for the hospital--replacing the Brackenridge Hospital police with contracted security agents who are not law enforcement officers or city employees--and you assert that it is excepted from disclosure by section 552.111 of the Government Code, which protects the following information from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency . . . .

This exception protects internal agency communications consisting of advice, recommendations, opinions and other material reflecting the deliberative or policymaking processes of the governmental body. Open Records Decision No. 615 (1993). Purely factual information is not excepted from disclosure by section 552.111. We have examined this memorandum and agree that most of the marked portions are excepted by section 552.111 of the Government Code. However, some of the marked portions describe the activities and legal authority of the Hospital Police Department. We believe that these portions are not excepted from disclosure by section 552.111, and have marked them accordingly.<sup>1</sup>

You finally assert that all or part of Exhibit F is excepted from disclosure under section 552.104, which applies to "information that, if released, would give advantage to a competitor or bidder," because it contains information from the unsolicited proposal by Burns International Security Services. You state that the city may soon issue a Request for Proposal from security firms, including Burns, and that the release of Exhibit F may place Burns at a competitive disadvantage.

Section 552.104 protects the interest of the governmental body, and not that of the private parties submitting information to the governmental body. Open Records Decision No. 592 (1991) at 8, 9. You do not claim that the interest of the city in a contracting process will be damaged by the release of Exhibit F. Accordingly, section 552.104 does not permit you to withhold any of the remaining information in that document. You may withhold the information in exhibit F that we have determined to be protected by section 552.111 of the Government Code. The remainder of that document must be released to the requestor.


We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records.

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<sup>1</sup>We remind you that sections 552.108 and 552.111 are discretionary exceptions to the act. See Gov't Code § 552.007. Therefore, the city may choose to release to the public some or all of this information without violating a penalty provision of the act.

If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, reading "Margaret A. Roll".

Margaret A. Roll  
Assistant Attorney General  
Open Government Section

MAR/SLG/LRD/rho

Ref.: ID# 26391

Enclosures: Marked documents

cc: Mr. Mike Todd  
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(w/o enclosures)